

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KIMBERLY PLETCHER, et al.,)	
)	
Consolidated Plaintiffs,)	
)	
v.)	Civil Action No. 2:20-754
)	
GIANT EAGLE INC., et al.,)	
)	
Defendants.)	

KIMBERLY PLETCHER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 2:21-1361
)	
GIANT EAGLE INC., et al.,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 10th day of November, 2021, upon consideration of Plaintiffs Kimberly Pletcher, et al.'s Motion to Consolidate Actions, (Civ. A. No. 20-754, Docket No. [106]), wherein Plaintiffs seek to consolidate a newly filed complaint at Civ. A. No. 21-1361 alleging violations of § 504 of the Rehabilitation Act against Defendants with the previously filed matter at Civ. A. No. 20-754 alleging violations of Title III of the Americans With Disabilities Act and the Pennsylvania Human Relations Act, Defendants Giant Eagle, et al.'s Response in Opposition, (Civ. A. No. 20-754, Docket No. [107]), wherein they object to consolidation as Plaintiffs have not been granted leave to amend, Plaintiffs' Reply, (Civ. A. No. 20-754, Docket No. [109]), and Defendants' Sur-Reply, (Civ. A. No. 20-754, Docket No. [111]), as well as decisions of the U.S.

Court of Appeals for the Third Circuit prohibiting plaintiffs from “maintain[ing] two separate actions involving the same subject matter at the same time in the same court and against the same defendant[s],” *McKenna v. City of Philadelphia*, 304 F. App’x 89, 91 (3d Cir. 2008) (quoting *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977)), and requiring that this Court “carefully insure that the plaintiff[s] do not use the tactic of filing two substantially identical complaints to expand the procedural rights [they] would have otherwise enjoyed,” *id.* (quoting *Walton*, 563 F.2d at 71), and that “the plaintiff[s] do[] not use the incorrect procedure of filing duplicative complaints for the purpose of circumventing the rules pertaining to the amendment of complaints,” *id.*, and the options available to the Court which include consolidating the two cases, staying Civil A. No. 21-1361, or dismissing that action, without prejudice, and the Court finding that the latter option is in the interests of justice given the procedural posture of these matters,

IT IS HEREBY ORDERED that Plaintiffs’ Motion [106] is DENIED, as premature and without prejudice to them seeking leave to file a Fourth Amended Complaint in Civ. A. No. 20-754;

IT IS FURTHER ORDERED that Plaintiffs shall file a motion for leave to amend in Civ. A. No. 20-754 by **November 17, 2021**;

IT IS FURTHER ORDERED that Defendants shall file their response by **December 1, 2021**; and,

FINALLY, IT IS ORDERED that Plaintiffs’ Complaint at Civ. A. No. 21-1361 is DISMISSED, without prejudice. The Clerk of Court shall mark Civ. A. No. 21-1361 CLOSED.

/s/Nora Barry Fischer
Nora Barry Fischer
Senior U.S. District Judge

cc/ecf: counsel of record